



TOWN OF WESTBOROUGH
MASSACHUSETTS
Conservation Commission

Forbes Municipal Building
45 West Main St.
Westborough, MA 01581
(508) 366-3014

DATE: August 1, 2023

RE: Minutes of Meeting of July 11, 2023

Members Present: Chairman Koenigsberg, Member Buckalew, Member Cushing, Member Henry, Member Kessler, Member Lundberg, Member Kelley

Members Absent:

Conservation Staff Present: Jennifer Miller; Conservation Director, Leah Grigorov; Conservation Assistant

Administrative Items & Updates

August Meeting Date: Tues, August 1st

Member Henry will not be available for this meeting. Member Buckalew added that if needed for a quorum, he can be available to attend this meeting remotely.

Approval of Minutes: June 13, 2023

There were no comments on the minutes. Chairman Koenigsberg signed them.

Conservation Department Updates

Director Miller updated the Commission on the 0 Ruggles Street property. She stated that the trails are in and there are a few trees that are hazardous which need to come down. The trailhead sign is in, and appreciation goes to WCLT and the DPW for assistance with these items. The reimbursement paperwork has been submitted. Eventually more trails will go in at this site.

Director Miller shared that the MassTrails Grant has been awarded to the Town for 25% design work for phase 2 of the BWALT Trail along Otis Street. There are wetlands in this area and the trails are drawn to go through private property. Funding is expected to go towards an ANRAD and collecting easements.

Director Miller shared that work with the DPW through their blanket DOAs has gone well and there is open communication. She continued by sharing a few project examples that the Conservation Department has helped the DPW condition.

Member Buckalew asked if there were any updates on the sewer problems on Bowman Lane. Director Miller explained that liquid discharges will have to dissipate over time and cannot be collected. She explained that the State requires the Board of Health and Wastewater Division to do up and downstream monitoring of bacterial levels. The levels are comparable now, and warning signs have been taken down. What happened was an elevated manhole was hit by a mower which caused interior bricks and concrete to fall in and break the manhole seal. Director Miller explained that because there is high infiltration in this area, a warning of this backup was not triggered at the sewer monitoring station.

Committee Updates

Chairman Koenigsberg shared that he is now a member of the Active Transportation and Safety Committee. Member Kessler updated that the Hocomonco Pond Reuse Committee moved their July meeting to August.

Director Miller shared that the Open Space Committee has a site walk this week at the Walker Property to try and engage the State's interest in acquiring the property.

Other Business

Director Miller asked the Commission if August 14th at 10AM works for those who are interested in the regulation revision working group meeting. Chairman Koenigsberg agreed to this time and Member Buckalew expressed interest.

Public Hearings and Meetings

Request for Certificate of Compliance, DEP File #332-785 (9 McTaggart St., Assessor ID 14-137-0)

The property owner Steve Wilichowski was present to represent the project. The site plan¹ was presented.

Director Miller asked if the area has been vegetated and Wilichowski answered yes, it has been for some time and they just failed to come in to close out the Order.

Member Buckalew made a motion to issue a full Certificate of Compliance under both the Wetlands Protection Act and Westborough Wetlands Protection Bylaw for DEP File #332-785 for work located at 9McTaggart Street Assessor ID 14-137-0. Member Henry seconded the motion and it passed with a 6-0 vote (with Member Cushing absent for the vote).

Continued Hearing, NOI File #332-0937 (165 Flanders Rd, Assessor ID 31-7-0)

Director Miller explained that the applicants will be before the Planning Board next week which she will attend, and that the Applicants are not in a rush to proceed with possible uncertainty on what the end goals are for the site.

Member Buckalew made a motion to continue the Notice of Intent hearing for Robert Schuler for work located at 165 Flanders Road, at the Applicant's request to the August 1, 2023 hearing. Member Kelley seconded the motion and it passed with a 6-0 (with Member Cushing absent for the vote).

Continued Hearing, NOI File #332-943 (9 Bowman Ln., Assessor ID 9-124A-0, 9-123-0, 9-111-0, & 9-231-0)

Joe Boccadoro from the Town of Westborough DPW, R.J. Dowling from Woodard & Curran, and Rich Kirby from LEC were present to represent the project.

Boccadoro explained to the Commission that the rationale behind the project qualifying as a limited project was submitted and he believes this issue to be resolved. He continued by saying that a bid specification was submitted as well and comments on this document were received from Director Miller and will be incorporated. He concluded by explaining that the original design for the post-construction channel is a balance between different standards and requirements, including compensatory storage gains as opposed to a low-flow channel design. The original design allowed for 2' of freeboard where a low-flow channel would result in a 40% reduction in freeboard. He asked the Commission if they would reconsider allowing the originally designed stream channel.

Chairman Koenigsberg asked for a definition of freeboard. Dowling explained that freeboard is the available space within the culvert above the design storm that allows for the passage of larger/less frequent storm. The culvert is designed to accommodate a 10 year storm event. The change of freeboard would go from 2' to 1.2' with low-flow conditions.

Director Miller asked what the gain was in terms of the Cold Water Fishery with low-flow conditions. Dowling explained that over time, a low-flow channel would naturally form in this area. Miller asked if the depth would exist to support the species and Dowling explained that it depends on the time of year.

Member Kessler asked if the brook at this location has species that merit protection. Kirby explained that it is unknown if the stream is being used as a Cold Water Fishery but there are time restraints for completing this work and a permit will need to be filed with the Army Corp of Engineers who will set conditions for the work. Kirby also explained that he has seen similar designs at other locations and that in those locations the channel becomes low-flow naturally.

Director Miller asked if a low-flow channel will occur naturally, will they run into the freeboard issue anyways. Dowling explained no, they would need to bring in and raise the streambed for low-flow conditions which causes the loss of freeboard.

Member Kessler asked if DEP had concerns with the initial design. Dowling explained that DEP did not provide any technical comments regarding the initial filing.

Member Buckalew made a motion to allow the use of the original plans for NOI File #332-943, 9 Bowman Lane, dated May, 2023. Member Kelley seconded the motion and it passed with a 6-0-1 vote with Member Cushing abstaining.

Member Buckalew made a motion to grant a waiver from Section 5.1.1 and Section 8.1 of the Town of Westborough Wetlands Protection Regulations requiring a minimum setback of 20 feet from the Limit of Disturbance from a wetland, which permits impacts to the Bank, Bordering Vegetated Wetlands, Bordering Land Subject to Flooding, and Land under Waterbodies and Waterways in accordance with the approved plans, and the Orders of Conditions for work associated with the removal and replacement of the culvert on Bowman Lane that conveys Jackstraw Brook, designated cold water fishery and therefore an Outstanding Resource Water. The waiver is granted to accommodate an overriding public interest in maintenance of the Town's stormwater conveyance systems and to upgrade failing infrastructure to comply with Massachusetts' River & Stream Crossing Standards. The motion was seconded by Member Kelley and passed with a 6-0-1 vote with Member Cushing Abstaining.

Member Buckalew made a motion to grant a waiver from Section 5.5.6 of the Town of Westborough Wetlands Protection Regulations requiring a wetland replication area a minimum of 1.5 times the impacted resource area, to accommodate an overriding public interest in maintenance of the Town's stormwater conveyance systems and to upgrade failing infrastructure to comply with Massachusetts' River & Stream Crossing Standards. Due to limits of the drainage easement, the waiver will permit replication at a 1:1 ratio for impacts to the Bank, Bordering Vegetated Wetlands, Bordering Land Subject to Flooding, and Land under Waterbodies and Waterways for work associated with the removal and replacement of the culvert on Bowman Lane that conveys Jackstraw Brook. The motion was seconded by Member Henry and passed with a 7-0 vote.

Director Miller asked if the easements on these properties have been secured. Boccadoro explained that they have not been secured yet. Miller expressed concerns as one of the direct abutters is attempting to sell their property and the Order will serve as an environmental lien on that property and could pose an issue for them. Member Lundberg explained that he does not believe a bank would hold off for this closing provided that it is clear that the Order does not impact the lot's use as a single-family house. Boccadoro explained too that the work could be shifted just enough to be off this property entirely and the need for an easement could go away.

Member Buckalew made a motion to close the Notice of Intent hearing under both the Wetlands Protection Act and Westborough Wetlands Protection Bylaw for DEP File #332-943 and issue an Order of Conditions with Special Conditions 1-37 & Exhibit A to the Town of Westborough DPW for work located at 9 Bowman Lane Assessor IDs 9-124A-0, 9-123-0, 9-111-0, & 9-231-0 pending receipt of the revised bid document with plans as revised. Member Kelley seconded the motion and it passed with a 6-0-1 vote, with Member Cushing abstaining.

Notice of Violation, 1 & 3 Denny Street: Review & Ratify

Director Miller explained that she was able to meet with the family at this residence and discuss the allowed uses of the wetland resource area, and explained to them that they may need to regulate work done by some of the family members. She explained to them that any further impacts would result in an Enforcement Order. She asked for remediation actions to take place as a result of pipe replacement, and asked for no further work on the pipe to move forward. The property at one point had agricultural exemptions, but at this point they no longer do. She reiterated to the residents that there is a difference between maintaining existing lawn and working within the streambed/bank. The purpose for the Notice of Violation is to make sure this has been documented in case of future issues.

Member Buckalew made a motion to ratify the Notice of Violation dated July 10, 2023 for unauthorized work within the intermittent stream located at 1 & 3 Denny Street. Member Henry seconded the motion and it passed with a 7-0 vote.

Enforcement Order, 0 Harvest Way (Ridings II Subdivision): Review & Ratify

Director Miller gave a history of the construction activities on the site. She explained that there is a lot of sediment to

run off on the site with a lot of fine-grain materials. The recent rains put the stormwater structures to the test and proved that they do not work as intended. Sediment breeched the erosion control measures, including additional added barriers, and traveled to the down gradient stream. The storms did not equal to a 2 year storm, but the rain events were intense when they happened. Both she and the Engineering Department are skeptical on if the basin will work at the end of the day when work has completed. Chairman Koenigsberg agreed with these concerns.

Director Miller explained that many of the catch basins clogged up with the fine soils causing rainwater to run down to the lower basin and ultimately resulting in the breach. She explained that the site currently has a cease and desist and all energy should be focused on stabilizing the site and remediating the stormwater structures. Member Cushing explained that stockpiles of soil should be covered by plastic, and he has seen this done in other locations in town.

The DPW also has a cease and desist on the site and the Engineering Department is looking for more bonding, and a new approach for site stabilization is anticipated from the property owner's engineer.

Chairman Koenigsberg explained that he isn't comfortable issuing a Certificate of Compliance for this site until the property owner has proved that the stormwater basin functions. Chairman Koenigsberg was questioning if the Commission or Town could obtain a bond as he does not believe the stormwater system will function when construction has completed. Member Kessler asked if the Commission should make the property owner aware of this standard now, instead of waiting until construction has completed. Director Miller shared that the Engineering Department has asked for an interim as-built plan of the basin, which can be reviewed to discuss these concerns further. Chairman Koenigsberg stated that he will express his concerns in writing and forward them to the Conservation Director to which she can distribute to the property owner.

Member Buckalew made a motion to ratify the Enforcement Order dated July 11, 2023 for the sediment release to the downstream Bordering Vegetated Wetland located at 0 Harvest Way (Ridings II Subdivision). Member Henry seconded the motion and it passed with a 7-0 vote.

Discussion: Care & Custody of Open Space Parcels at 0 Harvest Way (Ridings II Subdivision)

The Commission was not ready to address this item as a result of the above discussion.

Adjourn

Member Kessler made a motion to adjourn the meeting. Member Kelley seconded the motion and it passed with a 7-0 vote.

The meeting was adjourned at 8:16 PM.

Respectfully Submitted,
Leah Grigorov, Conservation Assistant


Chairman Koenigsberg

Materials submitted for and referenced in this meeting:

1. "Plot Plan of Land in Westborough, MA" dated June 21, 2007.